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Application Number

10/668,599

Filing Date

September 24, 2003

First Named Inventor

Stacy J. Driskell, et al.

Art Unit

3761

Examiner Name

Michele Kidwell

Attorney Docket Number

28135

ENCLOSURES (Check all that apply)

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Firm Name	Tyco Healthcare Retail Group, Inc.		
Signature			
Printed name	Michael G. Panian		
Date	July 12, 2007	Reg. No.	32623

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No.: 10/668,599
Applicant : Stacy J. Driskell, *et al.*
Filed: September 24, 2003
Title: DISPOSABLE ARTICLES WITH WETNESS
INDICATOR
Group Art Unit: 3761
Examiner: Michele Kidwell
Confirmation No.: 1527
Notice of Appeal Filed: February 8, 2007
Docket No.: 28135

APPEAL BRIEF UNDER 37 C.F.R. §41.37

Mail Stop Appeal Brief-Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

July 12, 2007

Sir:

Appellant hereby requests consideration and reversal of the Final Rejection dated November 15, 2006, of claims 28-30.

This Brief is presented in the format required by 37 C.F.R. §41.37, in order to facilitate review by the Board.

The fees for filing a Brief in support of an Appeal under 37 C.F.R. §41.20(b)(2), together with any extension fee in connection with the filing of this Brief, are provided herewith.

(i.) REAL PARTY IN INTEREST

The Real Party in Interest in this matter is Tyco Healthcare Retail Services AG by virtue of the Assignment recorded on July 8, 2004 at Reel/Frame 014829/0402.

(ii.) **RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences related to the subject matter of this Appeal.

(iii.) **STATUS OF CLAIMS**

Claims 28-30 are currently pending in this application and have been finally rejected. Claims 1-27 and 31-66 have been cancelled. Claim 28 is the sole independent claim remaining in the application, and all other pending claims (claims 29 and 30) ultimately depend from claim 28.

No claims in the application have been allowed. All claims are under appeal.

(iv.) **STATUS OF AMENDMENTS**

There are no outstanding amendments. The claims as they stand are set forth in the Claim Appendix

(v.) **SUMMARY OF CLAIMED SUBJECT MATTER**

The following summary is provided for all the claims. Exemplary references to the specification and figures are provided for purposes of non-limiting illustration with respect to selected exemplary embodiments of the invention.

Independent claim 28 is directed to a method of making an absorbent article by providing a top sheet, a back sheet and an absorbent core at least partially positioned between the top sheet and back sheet. A wetness indicator graphic is positioned between the back sheet and the absorbent core, while an unregistered graphic is positioned in a

waist portion of the article. The unregistered character graphic is applied to the waist portion of the article from a web having printed thereon repeated images. The wetness indicator graphic and unregistered character graphic are related to one another, but not interactively so. See, for example, page 37, ¶0094 through page 40, ¶00100 in conjunction with Figure 6.

Other embodiments of the invention recited in claims 29 and 30 are directed to details of cutting the web at certain predetermined intervals. See page 45, ¶00113.

(vi.) **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 28-30 stand rejected under 35 USC §112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the invention.

Claims 28-30 also stand rejected under 35 USC §102(b) as being anticipated by Timmons, *et al.* (U.S. Patent No. 4,022,211).

(vii.) **ARGUMENT**

A. **Summary of the Argument**

Indefiniteness

Applicants are of the view that the claims are not indefinite since there is no ambiguity as to what is intended based on a fair and objective reading of the claims and specification. Although the Examiner contends that there is some ambiguity between claiming an unregistered character graphic and a character graphic, applicants do not agree with this interpretation of the claims. The term “character graphic” is used to refer to an

image imprinted on a web which is, in turn, positioned in the waist portion of the article. This section of the claim clearly dealing with the use of a web refers to the unregistered character graphic which provides antecedent basis for the use of the term. The term “unregistered”, in the context of the invention, simply refers to the fact that the placement of the graphic on the article is not controlled. See, paragraph [0041], at pages 13 and 14 of the present specification. These terms are well-known in the art of absorbent articles. Applicants respectfully submit that the scope of the claims is reasonably ascertainable by one skilled in the relevant art in accordance with the provisions of 35 USC §112, second paragraph. See *Ex parte Porter*, 25 USPQ2d 114, 1146 (B.P.A.I. 1992).

Anticipation

“Character graphics” are defined in the present specification as denoting graphics containing anthropomorphic images, and in particular images having or suggesting a human form or appearance which ascribes human motivations, characteristics or behavior to inanimate objects, animals, natural phenomena, cartoon characters, or the like. See paragraph [0033], page 11 of the specification.

Although the Examiner maintains that Timmons, *et al.* discloses character graphics, this is not the case. Figs. 1-4 of the reference show graphics in the form of broken zigzag and wavy lines. Figs. 5 and 6 of the reference show graphics in the form of alphabet blocks. These graphics do not fall within the scope of the character graphics claimed in the present application. Accordingly, since the reference fails to disclose each and every element of the claimed invention, the claims cannot be anticipated by the reference. See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) (“A claim is anticipated

only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”).

B. Issue

Whether claims 28-30 are indefinite.

Whether claims 28-30 are anticipated by Timmons, *et al.*

C. Legal Standard

In order for a reference to be anticipated by a reference, that reference must disclose each and every element of the claimed invention. See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 632 (Fed. Cir. 1987) (“A claims is anticipated only if each and every element as set forth in the claim is found, either expressly or inherengly described, in a single prior art reference.”); see also *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989) (“The identical invention must be shown in as complete detail as is contained in the ... claim.”). Thus, Timmons, *et al.* is not properly citable as a reference under 35 USC §102.

D. Differences between the Appealed Claims and the Cited References

Timmons, *et al.* is directed to wetness indicators for absorbent pad assemblies in which the pad assemblies have light-transmitting back sheets. The wetness indicators, depicted in one embodiment, are alphabet blocks with letters printed thereon with a coloring agent. The outline of the blocks is printed with a permanent ink which will not dissolve.

However, the letters are printed with a water-soluble coloring agent which dissolves when wet. The disappearance of the letters is an indication that the article has been wet.

The Examiner contends that Timmons, *et al.* discloses both the wetness indicator graphics and the unregistered character graphics of the present invention. Support for the presence of the unregistered character graphics is alleged to be found at col. 3, lines 41-56, and in Figs. 5 and 6. This interpretation of the reference as applied to the unregistered character graphics is disputed by applicants as explained above.

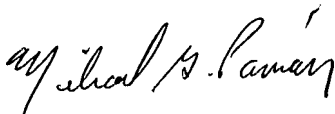
(viii.) Evidence Appendix

None.

(ix.) Related Proceedings Appendix

As set forth in Paragraph ii of the Appeal Brief, there are no related proceedings.

Respectfully submitted,



Michael G. Panian
Attorney for Appellant
Reg. No. 32,623

CLAIMS APPENDIX

28. (Previously amended) A method of making an absorbent article comprising:
- providing a top sheet;
 - providing a back sheet;
 - providing an absorbent core and positioning the absorbent core at least partially between the top sheet and the back sheet;
 - positioning at least one wetness indicator graphic at least partially between the back sheet and the absorbent core; and
 - positioning at least one unregistered character graphic in a waist portion of the absorbent article by a process comprising:
 - providing a web having printed therein a repeating series of character graphics;
 - cutting the web at predetermined intervals; and
 - positioning the web in the waist portion of the absorbent article;
- wherein the wetness indicator graphic and unregistered character graphic are related to one another, but not interactively interrelated.

29. (Original) The method as claimed in claim 28, wherein cutting the web at predetermined intervals comprises cutting the web at a length greater than the length of at least one set of character graphics in the repeating series.

30. (Original) The method as claimed in claim 29, wherein cutting the web at predetermined intervals results in at least one full character graphic positioned in the waist portion.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.



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Michele Kidwell

Attorney Docket Number

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Signature			
Printed name	Michael G. Panian		
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Typed or printed name	Michael G. Panian	Date	32623

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